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11 Attorneys for Defendant Crane Co.

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **(San Francisco Division)**

15 RUSSELL C. ROBERTS, JR.,

16 Plaintiff,

17 vs.

18 A.W. CHESTERTON COMPANY, et al.,

19 Defendants.

20 Case No. 3:08-cv-01338 JL

21 (Removed from Superior Court, County of San
22 Francisco, Case No. 274248)

23 **CRANE CO.'S REQUEST FOR ORAL
24 ARGUMENT ON PLAINTIFF'S MOTION
25 FOR REMAND**

26 Hearing Date: March 19, 2008

27 Time: 9:30 a.m.

28 Courtroom: F, 5th Floor

Judge: Chief Magistrate Judge James Larson

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30 Defendant Crane Co. hereby requests oral argument on plaintiff's Motion for Remand, and
31 that the Court defer ruling on said Motion until after such argument occurs at a time to be
32 determined by the Court, or by telephone conference pursuant to Local Rule 7-1(b). Crane Co.
33 requests oral argument for the following reasons:

34 1. The core issue posed in this case is the right of a diverse defendant to remove after
35 all non-diverse defendants settle their claims but before those claims are formally dismissed.
36 While Ninth Circuit precedent clearly establishes that formal dismissal is not required, that narrow
37 issue has not been squarely addressed in any reported decision of the Northern District of

1 California, and a District Court opinion from the United States District Court for the Central
2 District of California erroneously concludes otherwise. As such, Crane Co. believes that it will be
3 helpful to the Court to hold oral argument so that counsel for the parties can address questions of
4 the applicability of the authorities cited in the parties' briefs to the case at hand.

5 2. Counsel for Crane Co. has been informed that it is now the sole remaining
6 defendant against whom plaintiff intends to proceed at trial. At the time the Notice of Removal
7 was filed, the only defendants against whom plaintiff intended to proceed at trial were Crane Co.
8 and the Durabla Manufacturing Company, which is also diverse and consented to removal.
9 Counsel for Durabla has since informed the Court and Crane Co.'s counsel that Durabla has
10 resolved this matter with the plaintiff. See Declaration of Geoffrey M. Davis in Support of Crane
11 Co.'s Request for Oral Argument on Motion for Remand, ¶2 and Exhibit A thereto.

12 3. It is undisputed that Federal jurisdiction would otherwise exist, and that Crane Co.
13 would otherwise be entitled to remove this case. Crane Co., a citizen of Connecticut and
14 Delaware, and now the sole defendant at trial, is wholly diverse from the plaintiff, a citizen of
15 Washington, and the amount in controversy unquestionably exceeds \$75,000.

16 4. This is a determination of an important legal right -- the right, guaranteed by statute
17 and enshrined in the Constitution, for non-resident defendants to access United States courts.

18 5. Nonetheless, plaintiff opposes removal, arguing that defendants with whom he has
19 settled his dispute and against whom he no longer wishes to proceed at trial should nevertheless be
20 counted for jurisdictional purposes. As stated above, although Crane Co. believes that Ninth
21 Circuit precedent clearly supports removal in this case, this is an issue that has not yet been
22 squarely addressed in the Northern District of California (as discussed at p. 14 of Crane Co.'s
23 Memorandum of Points and Authorities in Opposition to Motion for Remand, the *Guerrero* case
24 does not address the particular issue before the court in this case).

25 6. Although plaintiff claims that the Motion for Remand must be decided with the
26 utmost urgency, plaintiff's trial evidence does not support that claim. Barry Horn, M.D. is one of
27 plaintiff's experts and the only witness at trial who addressed life expectancy. Dr. Horn testified

1 that the life expectancy for a patient such as the plaintiff and receiving similar treatment, is
2 approximately 2 years from diagnosis (which occurred in March, 2007). Dr. Horn also stated that
3 he does not expect plaintiff to survive more than one year, but did not give any opinion that the
4 plaintiff's life expectancy is any shorter than one year. (See, Trial Transcript, San Francisco
5 Superior Court, March 6, 2008, pp. 1543, 1552, attached as Exhibit B to the Declaration of
6 Geoffrey M. Davis in Support of Crane Co.'s Request for Oral Argument on Motion for Remand,
7 and ¶3 thereof.)

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10 KIRKPATRICK & LOCKHART
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12 Dated: March 18, 2008

13 By: 

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16 Geoffrey M. Davis
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Atorneys for Defendant Crane Co.